

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 893 of 1998

WITH

SPECIAL CRIMINAL APPLICATION No 894 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHASKAR J RAJA

Versus

ASHOK HARAKCHAND SHAH

Appearance:

MR YATIN SONI for Petitioner
MR JB PARDIWALA for Respondent No. 1
MR AJ DESAI, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/10/1999

COMMON ORAL JUDGEMENT

These two Special Criminal Applications have been

filed by Bhaskar J. Raja on 24-9-1998 against the order dated 31-7-1998 passed by the learned Judicial Magistrate First Class, Pardi rejecting the applications exhs.38 and 39 respectively filed in Criminal Case Nos.2568 of 1995 and 2513 of 1995 filed by the present petitioner in which he has requested the Court below to discharge him from the offences under Sec.204 of Cr.P.C. on the ground that no prima-facie offence has been disclosed against him. Against the orders passed by the learned Judicial Magistrate First Class, Pardi, present petitioner has preferred the above Special Criminal Application Nos.893 of 1998 and 894 of 1998 respectively. As common questions of facts and law are involved in both these petitions, I decide all these matters by way of a common judgment.

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#. According to the learned counsel for the petitioner, initially these two petitions have been filed by party-in-person and thereafter, he appeared as an advocate for the petitioner in both the matters.

#. It appears from both the Special Criminal Applications that learned counsel for the petitioner, Mr.Yatin Soni has filed the Vakalatnama in the month of December, 1998 and he has obtained ex-parte interim relief at the admission stage in terms of para 10(b) on 2-2-1999. So from the date of admission, learned counsel for the petitioner is on record and he is dealing with the matter. It is to be noted that from that date till today, above matters could not be proceeded further in view of the fact that trial of part-heard Criminal Case Nos. 2568 of 1995 and 2513 of 1995 has been stayed by this Court at admission stage and, therefore, learned counsel for the respondent No.1 has filed Cri. Misc. Appln. Nos.5876 of 1999 and 5874 of 1999 in Special Criminal Application Nos.893 of 1998 and 894 of 1998 respectively for vacating the interim relief granted by this Court on 2-2-1999 in present Special Criminal Applications. Thereafter, learned counsel for the petitioner has appeared and with the consent of the learned counsel appearing for the parties, these matters have been fixed for final hearing tentatively today. Today, at 11.00 a.m., learned counsel for the petitioner Mr.Yatin Soni appeared in the Court and requested that he may be permitted to withdraw these Special Criminal Applications with a permission to file afresh before the appropriate authority or pass any other appropriate order in the matter.

#. Learned counsel for the respondent No.1,

Mr.J.B.Pardiwala, has objected the said request on the ground that the original complainant-present respondent No.1 had filed criminal complaint under Sec.138 of the Negotiable Instruments Act in the year 1995 and during the trial of part-heard matters, present petitioner has submitted the above applications before the learned Judicial Magistrate First Class. The Court below, after hearing the learned counsel for the respective parties, rejected the same after appreciating all the aspects of the matter and stated that the petitioner wanted to delay the trial. Mr.Pardiwala has argued that name of learned counsel for the petitioner was there on record from the very beginning, i.e. from the date of admission till today and he has enjoyed the interim relief for a period of more than one year and when the matter is fixed for final hearing, learned counsel for the petitioner seeks permission to withdraw the petitions. Mr.Pardiwala has submitted that he has no objection if learned counsel for the petitioner is permitted for simple withdrawal but no further permission may be granted.

#. I have gone through the record and proceedings and also the orders passed by the Judicial Magistrate First Class, Pardi. The fact remains that criminal complaints have been filed by the complainant in the year 1995. It is to be noted that these are part-heard matters wherein present petitioner has preferred two rounds before the Court below and ultimately he has filed present proceedings before this Court and obtained ex-parte interim relief as a result of which, trial of the above criminal cases have been stayed. Now at the time of final hearing, he wanted to withdraw the petitions with a permission to file afresh before the appropriate Court stating that instead of present Special Criminal Applications, he may be permitted to file Criminal Revision Applications, it is nothing but an abuse of process of law and this Court certainly would not like to grant this type of permission in the present circumstances, but permission for simple withdrawal can be granted.

#. Under the circumstances, permission is granted to learned counsel for the petitioner for withdrawing these Special Criminal Applications. Interim relief in terms of para 10(b) granted by this Court on 2-2-1999 in Special Criminal Application Nos.893 of 1998 and 894 of 1998 is hereby vacated. Learned Judicial Magistrate First Class, Pardi is directed to proceed with the matter and dispose of the same as early as possible and preferably before December, 1999. These Special Criminal Applications stand accordingly disposed of withdrawn.

#. Original order is directed to be kept in Special Criminal Appln. No.893 of 1998 and a copy of the same is directed to be kept in Special Criminal Application No.894 of 1998.

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